

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WBLB, Inc.)	File No. EB-03-NF-061
Licensee of Station WBLB(AM))	NAL/Acct. No. 200432640001
Pulaski, Virginia)	FRN 0009992025

MEMORANDUM OPINION AND ORDER

Adopted: December 7, 2004

Released: December 9, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant in part and deny in part the petition for reconsideration filed by WBLB, Inc. (“WBLB”), licensee of Station WBLB(AM), Pulaski, Virginia,¹ of the *Forfeiture Order* issued on June 14, 2004,² and reduce the assessed forfeiture amount to one thousand five hundred dollars (\$1,500). The *Forfeiture Order* imposed a monetary forfeiture in the amount of eight thousand dollars (\$8,000) for repeated violation of the Emergency Alert System (“EAS”) requirements of Section 11.35(a) of the Commission’s Rules (“Rules”).³

II. BACKGROUND

2. On March 26, 2003 and on February 26, 2004, the Commission’s Norfolk, Virginia Field Office (“Norfolk Office”) conducted on-site inspections of Station WBLB(AM)’s facilities. The station’s EAS equipment malfunctioned (i.e., did not interrupt programming and did not transmit EAS attention signals) during both inspections. As a result of the inspections, the Norfolk Office released a *Notice of Apparent Liability for Forfeiture* (“NAL”).⁴ The NAL found that WBLB apparently repeatedly violated Section 11.35(a) of the Rules and proposed a \$8,000 forfeiture.

3. On June 14, 2004, the Enforcement Bureau (“Bureau”) released a *Forfeiture Order*,⁵

¹On October 1, 2003, WBLB’s license expired, and on January 3, 2004, its call sign was deleted and changed to DWBLB. WBLB had been operating under a grant of Special Temporary Authority, which was issued on December 16, 2003, and which expired on June 16, 2004.

²*WBLB, Inc.*, 19 FCC Rcd 10218 (Enf. Bur. 2004).

³47 C.F.R. § 11.35(a) (requiring broadcast stations to install functional generating, as well as receiving, EAS equipment “so that the monitoring and transmitting functions are available during the times the stations ... are in operation”).

⁴*WBLB, Inc.*, NAL/Acct. No. 200432640001 (Enf. Bur., Norfolk, Virginia Office, released March 11, 2004).

⁵See note 2, *supra*.

having had no record of receiving response to the *NAL*. The Bureau received WBLB's petition on June 25, 2004.⁶ In its petition, WBLB did not dispute that its EAS equipment had malfunctioned during the Norfolk Office's March 2003 and February 2004 inspections. However, WBLB sought cancellation or reduction of the assessed forfeiture based on its corrective actions, overall history of compliance and inability to pay.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁷ Section 1.80 of the Rules,⁸ and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁹ In examining WBLB's petition, Section 503(b)(2)(D) of the Act requires us to take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁰ We will respond to each of WBLB's claims separately below.

5. First, WBLB claimed that it corrected and brought the EAS equipment into compliance. In support, WBLB submitted a February 27, 2004 invoice, which indicates that the station's EAS audio switch was replaced and that its equipment was repaired and is now fully operational.¹¹ The Commission expects licensees to correct violations observed during an inspection,¹² but such corrective measures do not mitigate or warrant forfeiture cancellations or reductions for past violations.¹³ Moreover, we note that WBLB implemented corrective measures only after the second inspection.

6. Second, WBLB claimed that Station WBLB(AM) has an unblemished history of serving its community in compliance with Commission regulations. Our search of Commission, Bureau and Field

⁶According to WBLB, it sent the pleading captioned "Response of Apparent Liability for Forfeiture" on March 30, 2004, and resent the pleading on June 21, 2004, after it received the *Forfeiture Order*. Because the Bureau has no record of receiving the initial filing, we will treat and consider the pleading as a petition for reconsideration of the *Forfeiture Order* under Section 1.106 of the Rules, 47 C.F.R. § 1.106.

⁷47 U.S.C. § 503(b).

⁸47 C.F.R. § 1.80.

⁹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

¹⁰47 U.S.C. § 503(b)(2)(D).

¹¹Additionally, it has been noted that WBLB's station engineer contacted the Norfolk Office on February 27, 2004, to advise that the station replaced the audio switch, fully repairing the EAS equipment. See *NAL* at ¶ 3.

¹²See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875 ¶ 26 (2002) (finding that all Commission licensees and regulatees are "expected to promptly take corrective action when violations are brought to their attention," and that such corrective action does not warrant reduction or cancellation of a forfeiture for past violations); see also *Seawest Yacht Brokers*, 9 FCC Rcd at 6099, 6099 ¶ 7 (1994); *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003).

¹³*Id.*

Office decisions confirms that Station WBLB(AM) has no record of prior sanctions. After considering WBLB's overall history, we conclude that a reduction of the forfeiture amount to \$6,500 is appropriate.¹⁴

7. Finally, WBLB claimed that payment of the assessed forfeiture would pose a financial hardship on its "small hometown gospel radio station," which is located in the Appalachian Region of southwestern Virginia. In support, WBLB submitted tax returns for 2000, 2001 and 2002. In analyzing a financial hardship claim, the Commission generally considers gross revenues to be a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.¹⁵ After reviewing WBLB's claim and supporting documentation, we believe that payment of the \$6,500 forfeiture would pose a financial hardship. We thus conclude that a further reduction of the proposed forfeiture amount to \$1,500 is appropriate.¹⁶

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁷ and Section 1.106 of the Rules,¹⁸ the Petition for Reconsideration filed by WBLB, Inc. of the Bureau's June 14, 2004, *Forfeiture Order IS GRANTED* to the extent noted herein and **DENIED** in all other respects.

9. Payment of the \$1,500 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

¹⁴See, e.g., *Rotijefco, Inc.*, 18 FCC Rcd 14629, 14631 ¶ 8 (Enf. Bur. 2003); *Southern Rhode Island Public Broadcasting, Inc.*, 15 FCC Rcd 8115, 8117-18 ¶ 8 (Enf. Bur. 2000); *Aurio A. Matos and Juan Carlos Matos*, DA 99-1931 ¶ 7 (MMB 1999).

¹⁵See *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07 ¶ 43.

¹⁶See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089, ¶ 8 (1992).

¹⁷47 U.S.C. § 405.

¹⁸47 C.F.R. § 1.106.

¹⁹47 U.S.C. § 504(a).

²⁰See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to WBLB, Inc., 3570 Robinson Tract Road, P.O. Box 150, Pulaski, Virginia 24301, and by first class mail to Kathy Nipper, 751 East Main Street, Pulaski, Virginia 24301.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau